

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
FREEMAN, : Docket #22cv2435
 : 1-22-cv-02435-LLS-SN
 :
Plaintiff, :
 :
- against - :
 :
DEEBS-ELKENANEY, et al., : New York, New York
 : July 20, 2022
Defendants. :
----- : Telephone Conference

PROCEEDINGS BEFORE
THE HONORABLE SARAH NETBURN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: CSREEDER, PC
BY: MARK PASSIN, ESQ.
11766 Wilshire Boulevard, Suite 1470
Los Angeles, California 90025

For Defendants - COWAN, DEBAETS, ABRAHAMS &
Entangled Publishing, SHEPPARD LLP
LLC, Universal Studios BY: NANCY WOLFF, ESQ.
LLC, Holtzbrinck CECE COLE, ESQ.
Publishers, LLC, Tracy 41 Madison Avenue, 38th Floor
Wolff and Deeks- New York, New York 10010
Elkenaney:

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

Proceedings conducted telephonically and recorded by
electronic sound recording;
Transcript produced by transcription service.

APPEARANCES (Continued):

For Defendants Emily Sylvan
Kim and Prospect Agency, LLC:

KLARIS LAW, PLLC
BY: LANCE H. KOONCE, ESQ.
ZACHARY PRESS, ESQ.
29 Little West 12th Street
New York, New York 10010

For Defendant Crazy Maple
Studio, Inc.:

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP
BY: ERIC PLOURDE, ESQ.
525 B Street, Suite 2200
San Diego, California 92101

INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
----------------	---------------	--------------	-----------------------	----------------------	--------------

None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
---------------------------	--------------------	-----------	-----------	----------------------

None

1

2

1 PROCEEDINGS 4

2 HONORABLE SARAH NETBURN (THE COURT): Good
3 afternoon, everybody, this case is Freeman versus
4 Deeks-Elkenaney, the docket number is 22cv2435. May I
5 ask counsel for the plaintiff to state his appearance.

6 MR. MARK PASSIN: Good afternoon, Your Honor,
7 Mark Passin for plaintiff, Lynne Freeman.

8 THE COURT: Thank you. And on behalf of
9 defendants Deeks-Elkenaney and Entangled Publishing,
10 Universal City Studios, Holtzbrinck Publishers.

11 MS. NANCY WOLFF: This is Nancy Wolff from
12 Cowan, DeBaets, Abrahams & Sheppard for Entangled,
13 Holtzbrinck and Universal City Studios and Tracy
14 Wolff.

15 THE COURT: Thank you, my appearance sheet is
16 a little bit --

17 MS. WOLFF: My associate, CeCe Cole is in the
18 room with me here as well.

19 THE COURT: Okay, thank you. And who do we
20 have here on behalf of Crazy Maple Studio?

21 MR. ERIC PLOURDE: Good afternoon, Your Honor,
22 this is Eric Plourde from the Procopio firm appearing
23 for Crazy Maple Studio.

24 THE COURT: Thank you. And who are the
25 remaining defendants I haven't called?

1 PROCEEDINGS

5

2 MR. LANCE KOONCE: Your Honor, this is Lance
3 Koonce with Klaris Law for Emily Sylvan Kim and
4 Prospect Agency, LLC, and I believe our associate Zach
5 Press is on the line as well.

6 THE COURT: Great. Before we begin, I just
7 wanted to mention that I know Ed Klaris who is the
8 namesake of Klaris Law. I obviously have not spoken to
9 him about this case, I just noticed that when I was
10 preparing for today's conference and I certainly would
11 not speak to him, and I don't know when the next time
12 is that I would actually even see him. But I did want
13 to mention that, if anyone thought that that created
14 the appearance of impropriety I'm happy to have the
15 case reassigned to another judge. I personally don't
16 think it does but I'm happy, I want everyone know that
17 and if (indiscernible) more comfortable I'm happy to
18 have the case reassigned. Maybe I'll ask Mr. Passin
19 who might be the most interested?

20 MR. PASSIN: I have no problem, but I would
21 like to run it by my client, but I assume she'd have
22 no problem. For today it's fine, Your Honor, but I
23 don't expect it to be a problem.

24 THE COURT: Okay, I'm intending to rule on the
25 issue before us today, would you rather that I wait

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

6

until you --

MR. PASSIN: No, no, that's fine, like I said, I don't expect it to be a problem but I do want to mention it to my client. So you can, we waive any rights, you can definitely rule today, that's fine.

THE COURT: Okay, anybody else?

MR. KOONCE: Your Honor, this is Lance Koonce again though with Klaris Law Firm, and I should also mention that we are, I have a different case in which we have conflict counsel in the case with Mr. Cuti's, John Cuti's firm. I don't think that also creates a conflict, I just wanted to put that on the record, too.

THE COURT: Sure, John Cuti, for those not in the know, is my husband, so I have no idea what that matter is and I'm unaware of the case and certainly won't ask my husband about it. But I didn't even know about that issue so I'll now poll everybody again, now knowing that second potential issue which, as I understand it, is that, I was going to say whether my husband was serving as conflict counsel or Klaris Law was serving as conflict counsel on his matter, but it sounds like there is some relationship between the firm and my husband's law firm. Mr. Passin, again --

PROCEEDINGS

7

MR. PASSIN: Again, I waive it for today, I don't have any problem, I don't think it will be a problem with my client, but I do feel she's a lawyer and I just want to mention it to her.

THE COURT: Fair enough, anybody else with to be heard on that issue?

MS. WOLFF: No, Your Honor, we don't have any issues.

THE COURT: Okay.

MR. PLOURDE: No, Your Honor.

THE COURT: All right, thank you. So with that housekeeping matter resolved, I want to talk about this issue. I have the July 12th letter raising the concerns about the protective order. I understand that all of the defendants now believe that an attorneys' eyes only provision is necessary and, if so, that that provision should permit in-house counsel for the corporate defendants to review AEO material but that the plaintiff, notwithstanding her JD, notwithstanding the fact that she's a lawyer, would not be able to serve reciprocal relief, meaning she would not be entitled to review those attorneys' eyes only documents.

So before we talk about sort of parity, I'd like to hear from the defendants why they believe this type of

PROCEEDINGS

8

1
2 provision is necessary. I will share with you that in my
3 experience people spend a lot of time fighting over
4 protective orders but not a lot of time actually having
5 relevant litigation once the protective order is entered, so
6 I'm a little concerned that there's a dispute that's being
7 had but doesn't really serve any particular purpose or need.
8 I'm also concerned that AEO just complicates the production.
9 And third, it's not clear to me based at least on the
10 letters that I've reviewed what the, what type of material
11 is likely to be sought and produced that the defendants
12 think cannot be shown to the plaintiff.

13 I don't know who on the defense side is going to
14 take the lead on this issue.

15 MS. WOLFF: Well this is Nancy Wolff, I can start.
16 We included an attorneys' eyes only, we're at the very
17 beginning of discovery, we have, we're representing at this
18 time because of indemnifications four different
19 parties. Two of them are very large companies. We
20 don't know, you know, what documents will be produced
21 yet. We have a very restrictive attorneys' eyes only
22 provision which has a lot of safeguards to make sure
23 that it would not be used unnecessarily but my clients
24 feel that they should at least have the option in the
25 event there is some few documents that might qualify.

PROCEEDINGS

9

1 We, of course, don't intend to rubberstamp anything
2 attorneys' eyes only and even the way we drafted the
3 provision there is it is just the party would have to
4 have a good faith belief that it was highly
5 confidential or highly sensitive and it would have to
6 have an effect on business or commercial strategies,
7 (indiscernible) et cetera. There is an entire process
8 in here if one other party disputes if something
9 should be designated that way but, you know, this is,
10 these companies have, you know, we have a major book
11 distributor as well as a motion picture company, there
12 could be some very sensitive viewpoints, we don't know
13 yet. There could also be some unpublished very
14 sensitive material of a, you know, we just don't know.

15 We are starting to gather documents, we're
16 just starting to do document production, but I have
17 generally agreed when I've done other protective
18 orders in other cases, particularly involving
19 copyright and different companies, that there could be
20 this second level for highly sensitive information and
21 it's really there, you know, just in the even there is
22 something that is highly sensitive.

23 So the way we crafted it, it's very limited and,
24 you know, we're very cognizant that most documents will
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

10

be confidential but we don't, you know, we haven't seen everything and there may be some very limited documents that should be attorneys' eyes only.

THE COURT: Is your concern showing one client's documents to another client all on the same side of the V, meaning one defendant showing another defendant documents?

MS. WOLFF: No. No, it would really be information that's delicate, that perhaps the plaintiffs personally would not need to see, and it could be detrimental.

THE COURT: I'm not sure I follow. I could understand why you might be concerned with various publishing houses, for instance, that compete with each other, that are all defendants right now, that as between those defendants maybe you feel like there is trade secrets or other sort of business strategy that you wouldn't want your competitors to see. I would understand that potentially, and that's the purpose for which attorneys' eyes only is generally created. You know, if you have documents that are sensitive that you just think are sort of sensitive for whatever reason, that's why we have a protective order. And so what I'm trying to figure out is what documents do you think are going to be sought and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

11

produced that are, that would have a detrimental business effect not if the public saw it, but if the plaintiff saw it. And that's when you need attorneys' eyes only, and I'm not sure I see where that would come out here.

MR. PLOURDE: Your Honor, this is, I'm sorry to interrupt, Nancy, this is Eric Plourde for Crazy Maple. So, first, I would like to respond directly to your last question but very briefly I would just note that for our client this is of increased concern only because we were named as a defendant a little bit later. So all of the caveats about we're early in the process, we're just getting our arms around the documents that apply to all of the defendants, apply with much greater force to our client who it's been, frankly, a little bit of a whirlwind. I think there as a four month discovery deadline proposed before we had even been served. We discovered the existence of this lawsuit independently. And so, you know, we're really trying to make sure that we're not waiving any rights.

And on the specific question about sharing documents with the other defendants, that is a concern for our client. You know, for example, we have a licensing agreement with one of the other defendants, Entangled, that relates to this case, that was disclosed in our initial

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

12

disclosures a few days ago. And we have some concerns about the idea that, you know, we're negotiating with another party, you know, obviously working together but counterparties to contracts and now we are talking about disclosing some potentially very sensitive information about how we are going about calculating whatever it may be, profits, financial information. There are also concerns which relate both to the other defendants and to the plaintiff about the various scripts for the game that's at issue that our client produces. And so --

THE COURT: For the various what, sorry, I didn't hear you?

MR. PLOURDE: Scripts. So our client produces a video game and is alleged to have infringed on copyright for this book by producing a story as part of that video game that is similar to that book, and so there could be script related to writing for that game that is highly sensitive to our client as well. I think those are the two categories, the scripts and the financial information.

And so I just want to jump in because the concern regarding sharing between defendants is sort of a big factor to Crazy Maple and we're a little newer on the scene here, so.

THE COURT: Okay, again, I sort of understand both

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

13

the concern about different corporate defendants, and that might include financial records potentially. I don't know why scripts, for instance, would have to be attorneys' eyes only. I don't know how the plaintiff should be expected to prosecute her claims if she can't review other infringing materials that you might produce in this litigation. So I don't see why the plaintiff needs to be shielded from those types of, that type of information.

Again, nobody is disputing a protective order, so nobody is going to publish any of these materials in *The New York Times*, the question is whether or not you need to impose what I think we can all agree makes litigation much more burdensome and complicated and difficult for the parties to actually understand what's going on if there isn't a real need for it.

MR. PLOURDE: I understand, Your Honor. I would also add I, you know, I feel a little bit, you know, we have a little bit of a sort of trifecta of arguments going on here that I think is causing a little bit of this stalemate because, for example, from our client's perspective we wanted the attorneys' eyes only provision and I believe that the plaintiff's counsel originally took issue with an AEO provision

PROCEEDINGS

14

1
2 that allowed documents to be shared with in-house
3 counsel which is a provision that our client has no
4 issue getting rid of. I think some of the other
5 defendants want to maintain that if there is an
6 attorneys' eyes only provision it can be shared with
7 in-house counsel but the plaintiff for I believe the
8 sake of parity has said, well, if that's the case then
9 my client should have the ability to see those
10 documents as well.

11 So going back to the issue of this being
12 fairly early in the case, particularly for my client,
13 it seems as though there is some recognition that AEO
14 could be justified, and I agree with the other
15 defendants, it's possible we may not even use the category,
16 but it seems awfully prejudicial at least to me that we
17 would waive the ability to be able to do that at any point
18 in discovery essentially because one of our co-defendants
19 who, you know, we've been meeting and conferring on these
20 issues but their position is that they need to show these to
21 in-house counsel. I think our position would be that the
22 category should not be eliminated wholesale but that there
23 should be some kind of ruling that resolves the parity issue
24 that plaintiff's counsel has raised.

25 THE COURT: And so what's your proposal?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

15

MS. WOLFF: Your Honor, this is Nancy Wolff again, I just wanted to comment on your issue of, you know, what may be, I mean, in my experience and I've almost had no protective orders without an attorneys' eyes only, it's used very rarely and has never interfered with any party being able to prosecute their case. The plaintiff is a writer and there could be perhaps some limited issues involving our clients' trade practices that she shouldn't see that would not have anything to do with the merits of the case, because in discovery a lot of documents get scooped up that aren't exactly pointed to the merits of the case, we just don't know that. (indiscernible) the documents that (indiscernible) received are very long, there's many, many documents requested and it will take some time to really go through them. And that's why we made a very sort of strict attorneys' eyes where it would have to comply with the categories that we laid out and it would, it would be very limited. You know, if the only issue is the in-house counsel we can discuss that but none of the defendants wanted to waive the right in limited cases to have this extra level and frankly I've never had anyone every complain about it before in a case in the Southern District. It's just, it's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

16

there for the rare circumstances where you need it but you don't know when you're starting out if you're going to need it.

THE COURT: I'm looking at your definition and it would be any item that has a significant effect on current or future business or commercial strategies or decisions or, two, product, plans or development. And I would imagine that this entire case has to do with product, plans or development.

MS. WOLFF: It's actually not, it really has to do whether two works are substantially similar that have already been published.

THE COURT: Well wouldn't that necessarily involve investigating how the second work was developed?

MS. WOLFF: Well that would be, I don't -- that's the creation of a work, not the development, and we would not designate it, we have not, we do not plan to designate documents that deal with the creation of the work as attorneys' eyes only. And we've already discussed with the plaintiff how we have those documents, how these works were all independently created.

THE COURT: Would you consent if I were to

1 PROCEEDINGS 17

2 authorize the attorneys' eyes only provision, to
3 language that made clear that it could not be used to
4 designate anything concerning the works at issue?

5 MS. WOLFF: No, that's too broad, designate to
6 the creation of the works at issue, because that's the
7 only relevance to the copyright is whether the author,
8 Tracy, used this underlying manuscript for her "Crave"
9 series.

10 THE COURT: Let me hear from Mr. --

11 MS. WOLFF: There could be some, you know,
12 marketing, there could be some, you know, we just
13 don't know what documents are going to, you know, turn
14 up. But really the heart of this entire case is
15 whether the two, if you put these two works side by
16 side, whether they're substantially similar.

17 THE COURT: Mr. Passin, do you want to weigh
18 in on some of these issues --

19 MR. PASSIN: I absolutely do, Your Honor.
20 First of all, I want to point out that, you know, I've
21 practiced law for 40 years and I've always had a
22 problem with attorneys' eyes only clause. My
23 experience has been that they're abused and it
24 prevents me from properly advising my clients. In my
25 opinion an attorney should not hold any secrets from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

18

their clients, all right, and I have to tell you I served my first set of document requests back in I think June the 7th. So it's been over a month, I don't have a single -- I served it on everyone other than Crazy Maple because they were new and I don't have a single document. I asked Ms. Wolff, you know, why don't I have any documents, she said all the documents are, every single document is confidential, okay. So I already know someone that says that I think it's hard to believe that every single document is confidential, all right.

There are a few types of cases where it's justified to have an attorneys' eyes only clause, that's a trade secrets case. But this is primarily a copyright case and I don't know if Your Honor looked at the joint letter that was sent to Judge Torres dated July 8th, but you can see in that joint letter what the defendants plan on doing. If you look at footnote 1 which I will read to you because you may not have it, it says, and this is the section drafted by the defendants, "It also is irrelevant that plaintiff is not a competitor of the defendants and plaintiff's position ignores the possibility that certain defendants may not want other defendants to have access to specific documents,

PROCEEDINGS

19

including but not limited to documents relating to royalties and commissions."

Well, Your Honor, so they intend on marking as AEO documents relating to royalties and commissions. Now, as we all know, damages in copyright include disgorgement of profits and commissions, and if those are stamped AEO I might as well notify my malpractice carrier now because I can't properly advise my client on how to proceed in the case because of its value or how to settle the case.

Moreover, I think there should be no attorneys' eyes only and my -- and, by the way, the stipulation that I proposed has a clause in it that allows the parties if they think something should be stamped attorneys' eyes only to confer with counsel and then if there's a dispute to go to Your Honor. Now if despite all this you're still going to want an attorneys' eyes only clause, my client is an attorney and I have to tell Your Honor I treat her as an in-house counsel. Because she's an attorney I talk to her far more than I talk to any other client. I talk to her numerous times daily and I don't do almost anything in this case without running it by her and having her review documents because she is an

1 PROCEEDINGS

20

2 attorney.

3 So I suggest that my stipulation that has not
4 attorneys' eyes only provision in it is a good
5 compromise and so we should either have one without an
6 attorneys' eyes only category at all, but if do then
7 my client should have access to them. And I'd like to
8 get this resolved so I can get some documents, we only
9 have a 40 day window, excuse me, a 4 month window,
10 it's 3 or 4, I don't remember, to collect discovery
11 and, like I said, I served those over a month ago and
12 I still don't have a single document.

13 MR. PLOURDE: Your Honor, may I briefly be
14 heard on that?

15 THE COURT: Who is this?

16 MR. PLOURDE: Eric Plourde for Crazy Maple.

17 MR. PASSIN: Eric, by the way, I pointed out
18 that you were not included, I didn't serve you.

19 MR. PLOURDE: Absolutely. And I just briefly,
20 Mr. Passin can make his argument, I just want to note
21 that, Your Honor, I just want to make sure that our
22 client is not being prejudiced by some of the other
23 activity that may have happened. We just got document
24 requests a few days ago, we're still, you know, we're
25 sort of behind in the process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

21

I will say, and I can't speak for the other defendants, but just from my client's perspective, we are okay with some kind of compromise, whether it's eliminating the in-house counsel language, whether it is a meet and confer requirement before designating the documents AEO. All I'm concerned about is having something where I can give my client the confidence that if something important comes up, that we have recourse within the existence of the protective order. I think that's very important, at least for my client, I think the other defendants agree, but I just mention it because, again, we're a little newer on the case, so.

MS. WOLFF: Your Honor --

MR. KOONCE: Your Honor --

MS. WOLFF: Oh, I'm sorry, I thought you were done, apologize.

MR. KOONCE: Oh, this was actually Lance Koonce, Nancy. Your Honor, generally, I just wanted to just for the record to say that we are, our clients, my client here is a small literary agency and the principal of the agency was also named individually. They don't have in-house counsel so that aspect of the protective order is not really at issue for my client. I would reiterate, I think we're along

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

22

the same lines as counsel for Crazy Maple. We are most concerned with the ability to mark the occasional document that we find that is highly sensitive and in a narrow sense of what highly sensitive is. My thinking has been that that would likely be limited to very sensitive financial documents and especially forward looking at materials that would disclose in any way, you know, what the agency is doing with, either with its other authors or what it might do, what it might do in the future, what it's making on, in royalties. So that might be something that they would consider attorneys' eyes only.

Obviously, if counsel for plaintiff at some point needs to, after seeing all the documents that are produced, if some of those, if anything has been marked attorneys' eyes only that's financial information that he needs to discuss at some level with his client, there are provisions for, you know, for addressing the attorneys' eyes only designation that can be addressed.

But I, I think we would also be comfortable with an attorneys' eyes only provision that was, you know, that was fairly narrowly tailored and did not include, you know, to the extent the language that was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

23

proposed would have included things like the development of, you know, the creation of a work, I don't think we would anticipate marking anything, at least from the agency side, as attorneys' eyes only. So if it needed clarification around that type of language I think we'd be amenable to that.

THE COURT: Thank you.

MS. WOLFF: Your Honor, this is Nancy Wolff. I just wanted to add that if we did designate something attorneys' eyes only and the plaintiff objects, we have a meet and confer already in this agreement as well as if we can't resolve it, you know, to seek guidance from the magistrate.

And in terms of documents, document responses were only due last week, we completed all of them, and I would like to note that we have yet to receive from the plaintiff any of the manuscripts at all that the plaintiff believes were used in the creation of these books. And they were filed with the Copyright Office months and months ago so they're not confidential, they're public, and we don't even have access to those which is --

MR. PASSIN: Your Honor, may I -- I'm sorry.

THE COURT: All right, everyone needs to

1 PROCEEDINGS 24

2 remember that having phone calls at this stage in the
3 pandemic is more of a privilege than a public health
4 requirement, and so if parties keep speaking over one
5 another or don't announce who's speaking then we'll
6 just move to an in court conference. So I need people
7 to be more respectful of one another. So, Ms. Wolff,
8 I don't know if you're done speaking?

9 MS. WOLFF: Yes, thank you.

10 THE COURT: Okay.

11 MR. PASSIN: Your Honor, may I be heard, it's
12 Mark Passin.

13 THE COURT: Yes.

14 MR. PASSIN: In conclusion, I just wanted to
15 add that I believe there should be no attorneys' eyes
16 only provision. If there is one it should allow
17 counsel, including my client, to see it and, by the
18 way, that resolves the problem with co-defendants not
19 wanting everyone to see their works. And if, despite
20 my urging, there is an attorneys' eyes only provision,
21 it should exclude any of the works or any financial
22 information. Because, again, I'm hearing people talk
23 about royalties and financial information, I have to
24 be able to disclose to my client all money that's
25 earned by each one of the defendants so I can advise her

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

25

regarding how to proceed and about any settlement.

THE COURT: Okay, thank you, everybody. You know, as I said from the outset, in my experience attorneys' eyes only provisions A) make things much more complicated than they're usually worth, and B) are really appropriate when there are sort of competitor issues and heightened sensitivity about businesspeople that are adverse to one another in a litigation using the litigation as an opportunity to get tactical advantages. And that's just not what's happening in this case. Everything that the defendants have referenced just seems like things that they want super confidentiality on but not that they need them to be protected.

And so based on everything I've heard here I don't think there is a basis or a need for an AEO provision. I think it will make things unnecessarily complicate and, again, it's not intended to be a supersized confidentiality provision, it's intended when there are other interests than the litigation interests that could potentially be implicated and that's just not the case here. You know, so the extent it is the case, vis-à-vis defendant, maybe there does need to be a provision as far as sharing of documents from one corporate defendant to another. Nobody really has mentioned that as a particular problem, potentially Crazy

1 PROCEEDINGS

26

2 Maple referenced something.

3 And so if the parties want to go back to the
4 drawing board and come up with provisions that protect other
5 defendants from one another because they're in a
6 competitive stance and they don't want to share their
7 own strategic thinking and business thinking, I would
8 understand that. And potentially the way to resolve
9 that desire is to have an attorneys' eyes only
10 provision but to deem the plaintiff an attorney as her
11 own in-house counsel, as plaintiff's counsel
12 represents. And that may be a way for the defendants
13 vis-à-vis other defendants to have some protection from
14 strategic disclosures. But vis-à-vis the plaintiff, I
15 haven't heard anything thus far that makes me think that the
16 burdens of having an AEO provision are outweighed or, excuse
17 me, outweigh any benefits. So the application is denied.

18 MR. PLOURDE: Your Honor, may I be heard
19 briefly, this is Eric Poured?

20 THE COURT: Sure.

21 MR. PLOURDE: There is, I just went back to
22 check my notes and if that's Your Honor's finding I
23 understand, there's one category of very particular
24 information that, frankly, I actually don't even think
25 is relevant in the case or I don't anticipate even

PROCEEDINGS

27

1
2 being requested to provide it, but it is something
3 that my client noted as being highly, highly sensitive
4 to their business which is source code for their game.
5 Again, I, you know, I look at this category as I can't
6 contemplate a way that it's necessarily relevant to
7 the case, however, if we go through the exercise, and
8 I don't think it's been requested but if it is, if we
9 object, if we end up producing it, that is I think
10 just one particular category I would ask that the
11 Court allow Crazy Maple to designate attorneys' eyes
12 only including keeping it from the plaintiff, just
13 given the highly sensitive nature of that source code.

14 THE COURT: Understood. So I think the better
15 way to proceed, rather than creating this provision
16 which I think is unnecessary in this case writ large,
17 and then having everybody try and pigeonhole their
18 document into it, is let's just wait and see what the
19 discovery requests are and what is produced. If, and
20 it sounds like it hasn't come up yet, your coding is
21 requested and you believe the rules require you to
22 produce it but you want more confidentiality, you
23 should just meet and confer with the a stipulation
24 related to that production or if you can't reach
25 agreement you can bring it to my attention. And that

PROCEEDINGS

28

1 goes for any other category of documents that the
2 defendants really feel like will create a, you know, are
3 being used for tactical reasons, not litigation reasons and
4 can potentially, you know, seriously affect people's
5 business. But I am not going to allow an AEO provision to
6 be used in the way it seems to be discussed with me today,
7 which is just a supersized confidentiality provision.
8

9 So the parties should meet and confer, it sounds
10 like there are two options I'm presenting to you, either
11 there's no AEO provision or to address the concerns of sort
12 of inter-defendant production, there is an AEO provision but
13 the plaintiff, herself, as a lawyer is entitled to review
14 those documents. And I'll just ask that the parties submit
15 to me for my signature a proposed protective order by next
16 Monday.

17 Otherwise, I know that Judge Torres set a case
18 management plan in this case and thereafter referred the
19 case to me. So going forward all discovery matters will be
20 in my court. So if you have discovery issues after a meet
21 and confer, you should file those with me.

22 In addition, if there is any interest in talking
23 about settlement I'm happy to get engaged. I will warn you
24 that my calendar fills up very quickly, and so right now I'm
25 scheduling settlement conferences for early October. So

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

29

if you think you want to have a settlement conference with me, it would be in your interest to get that on my calendar as soon as possible, even if closer to the date you realize it's not going to be productive and you want to cancel it I'm happy to get a day back, but it's very hard for me to squeeze people in last minute and I'm not going to move litigation deadlines to accommodate late requests. So just keep that in mind and if you do want to schedule a conference you can just email my courtroom deputy.

Alternatively, if you want to have supervised settlement discussions before I'm available, I can also refer you to our mediation program. And I can even make a request for someone who might have some IP expertise that might be appropriate for a case like this. So I'll just leave that for the parties to contact us.

MR. PASSIN: Thank you very much, Your Honor.

THE COURT: Okay, anything further from the plaintiff?

MR. PASSIN: No, thank you very much, Your Honor.

THE COURT: All right, anything further from any of the defendants?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PROCEEDINGS

30

MR. KOONCE: No, thank you, Your Honor.

MR. PLOURDE: Thank you, Your Honor. No, Your Honor.

MS. WOLFF: No, Your Honor, thank you.

THE COURT: Thank you, everybody, we're adjourned.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Freeman versus Deeb-Elkenaney, et al., Docket #22cv2435, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: January 17, 2023